

FIRST REGULAR SESSION

SENATE BILL NO. 364

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS CLEMENS AND SCHAEFER.

Read 1st time February 12, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1283S.02I

AN ACT

To amend chapter 260, RSMo, by adding thereto eight new sections relating to the television electronic recycling act, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 260, RSMo, is amended by adding thereto eight new sections, to be known as sections 260.1250, 260.1253, 260.1256, 260.1259, 260.1262, 260.1265, 260.1268, and 260.1271, to read as follows:

260.1250. 1. Sections 260.1250 to 260.1271 shall be known and may be cited as the "Television Electronic Recycling Act". The purpose of sections 260.1250 to 260.1271 is to establish a comprehensive and convenient television recycling and reuse program based on shared responsibility among all stakeholders, including manufacturers, consumers, retailers, and government. The purposes of this recovery system are to ensure that end-of-life televisions are responsibly retired or recycled to promote resource conservation through the development of an effective and efficient system for recycling such products, and to require manufacturers to offer such service to consumers with convenience.

2. For purposes of sections 260.1250 to 260.1271, the following terms shall mean:

(1) "Brand", symbols, words, or marks that identify a covered television, rather than any of its components;

(2) "Covered television", a television, but does not include any of the following:

(a) An electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use

21 in a motor vehicle;

22 (b) An electronic device that is functionally or physically a part
23 of, or connected to, or integrated within equipment or a system
24 designed and intended for use in an industrial, governmental,
25 commercial, research and development, or medical setting, including
26 but not limited to diagnostic, monitoring, control, or medical products,
27 as defined under the Federal Food, Drug, and Cosmetic Act, or
28 equipment used for security, sensing, monitoring, anti-terrorism,
29 emergency services purposes, or equipment designed and intended
30 primarily for use by professional users;

31 (c) An electronic device that is contained within a clothes
32 washer, clothes dryer, refrigerator, refrigerator and freezer, microwave
33 oven, conventional oven or range, dishwasher, room air conditioner,
34 dehumidifier, air purifier, or exercise equipment;

35 (d) Telephones of any type, including mobile phones;

36 (e) A personal digital assistant (PDA); and

37 (f) Global positioning systems (GPS);

38 (3) "Department", the department of natural resources;

39 (4) "Household", any occupant of a single detached dwelling unit
40 or a single unit of a multiple dwelling unit who has used a covered
41 television primarily for personal or home business use;

42 (5) "Market share", a television manufacturer's obligation to
43 recycle discarded televisions. A television manufacturer's market share
44 is the television manufacturer's prior year's sales of televisions, by
45 weight, as calculated by the department divided by all manufacturers'
46 prior year's sales for all televisions, by weight, as calculated by the
47 department. Market share may be expressed as a percentage, a
48 fraction, or a decimal fraction;

49 (6) "Person", means any individual, business entity, partnership,
50 limited liability company, corporation, not-for-profit corporation,
51 association, governmental entity, public benefit corporation, or public
52 authority;

53 (7) "Program year", a full calendar year beginning on or after
54 January 1, 2011;

55 (8) "Recover", to reuse or recycle;

56 (9) "Recoverer", a person or entity that reuses or recycles;

57 (10) "Recycle", processing, including disassembling, dismantling,

58 and shredding, covered electronic devices or their components to
59 recover a useable product. This term does not include any process
60 defined as incineration under applicable laws and regulations;

61 (11) "Retailer", a person who owns or operates a business that
62 sells covered televisions directly to a consumer, including through sales
63 outlets, catalogs, or the Internet, whether or not the seller has a
64 physical presence in this state;

65 (12) "Sell", "offer for sale", or "sale", any transfer for consideration
66 of title including, but not limited to, transactions conducted through
67 sales outlets, catalogs, or the Internet or any other similar electronic
68 means, but does not mean financing or leasing;

69 (13) "Television", any electronic device that contains a tuner that
70 locks on to a selected carrier frequency and is capable of receiving and
71 displaying of television or video programming via broadcast, cable, or
72 satellite, including, without limitation, any direct view or projection
73 television with a viewable screen of nine inches or larger whose display
74 technology is based on cathode ray tube (CRT), plasma, liquid crystal
75 (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS),
76 silicon crystal reflective display (SXRD), light emitting diode (LED), or
77 similar technology marketed and intended for use by a household. This
78 term does not include a computer, computer printer, computer monitor,
79 or portable computer;

80 (14) "Television manufacturer", a person who:

81 (a) Manufactures for sale in this state covered televisions under
82 a brand that it licenses or owns;

83 (b) Manufactures for sale in this state covered televisions
84 without affixing a brand;

85 (c) Resells into this state a covered television under a brand it
86 owns or is licensed to use produced by other suppliers, including retail
87 establishments that sell covered televisions under a brand the retailer
88 owns or licenses;

89 (d) Imports into the United States or exports from the United
90 States a covered television for sale in this state;

91 (e) Sells at retail a covered television acquired from an importer
92 that is the manufacturer as described in paragraph (d) of this
93 subdivision, and elects to register in lieu of the importer as the
94 manufacturer for those products;

95 (f) Manufactures covered televisions, supplies them to any
96 person or persons within a distribution network that includes
97 wholesalers or retailers in this state, and benefits from the sale in this
98 state of those covered television through such distribution network; or

99 (g) Assumes the responsibilities and obligations of a television
100 manufacturer under this section. In the event the television
101 manufacturer is one who manufactures, sells, or resells under a brand
102 it licenses, the licensor or brand owner of such brand shall not be
103 included in the definition of television manufacturer under paragraphs
104 (a) or (b) of this subdivision.

105 3. The recovery provisions of sections 260.1250 to 260.1271 apply
106 to covered televisions used and returned by consumers in this state.

 260.1253. 1. No television manufacturer shall sell or offer for sale
2 a covered television in this state unless the television manufacturer
3 includes the television manufacturer's name and brand, whether owned
4 or licensed, on the covered television.

5 2. By January 1, 2011, each television manufacturer, before
6 selling or offering for sale covered televisions in the state, shall
7 register with the department and, at the time of registration, shall pay
8 an initial registration fee of two thousand five hundred dollars to the
9 department. Thereafter, if a television manufacturer has not
10 previously registered, the television manufacturer shall register with
11 the department prior to any offer for sale for delivery in this state of
12 the television manufacturer's new covered televisions. A television
13 manufacturer that has registered shall pay an annual renewal
14 registration fee of two thousand five hundred dollars to the
15 department. The annual renewal registration fee shall be paid to the
16 department by January first of each year.

17 3. The registration and each renewal shall include a list of all of
18 the brands the television manufacturer is using on covered televisions,
19 regardless of whether it owns or licenses the brands, and shall be
20 effective on the second day of the succeeding month after receipt by the
21 department of the registration or renewal.

22 4. A television manufacturer shall provide the department with
23 contact information for the television manufacturer's designated agent
24 or employee whom the department may contact for information related
25 to the television manufacturer's compliance with the requirements of

26 this section.

27 5. The obligation to recycle covered televisions shall be allocated
28 to each television manufacturer based on the television manufacturer's
29 market share multiplied by the total pounds of covered televisions
30 recycled by all television manufacturers during the previous program
31 year. Beginning in program year 2011, a television manufacturer shall
32 annually recycle or arrange for the recycling of covered
33 televisions. Beginning in the program year 2012, a television
34 manufacturer shall annually recycle or arrange for the recycling of its
35 market share of covered televisions, as calculated by the department.

36 6. A television manufacturer may fulfill the requirements of this
37 section either individually or in participation with other television
38 manufacturers.

39 7. A television manufacturer shall report to the department by
40 January 31, 2012, and annually thereafter, the total weight of covered
41 televisions the manufacturer collected in the state and recycled during
42 the previous year.

260.1256. 1. Beginning January 1, 2011, a retailer shall not sell
2 or offer to sell any covered television in this state unless a visible,
3 permanent label clearly identifying the manufacturer of that device is
4 affixed to the equipment and the television manufacturer has
5 registered with the state.

6 2. Beginning January 1, 2011, retailers shall make available to
7 their customers information on collection services in the state,
8 including the department's website and toll-free telephone
9 number. Remote retailers may include this information in a visible
10 location on their websites to fulfill this requirement.

11 3. Retailers shall not be liable in any way for data or other
12 information that a consumer may leave on a covered television that is
13 collected or recycled.

260.1259. 1. The department shall use state-specific television
2 sales data or national television sales data available from commercially
3 available analytical sources to determine each television
4 manufacturer's recovery responsibilities for televisions based on the
5 manufacturer's market share. If the department uses national sales
6 data, the department shall extrapolate data for the state from national
7 data on the basis of the state's share of national population. The

8 department shall seek to establish the most accurate determination of
9 each manufacturer's market share and may rely on supplemental
10 sources of information to achieve this goal.

11 2. By March 15, 2012, and annually thereafter, the department
12 shall notify each manufacturer of its non-binding recycling
13 obligation. Each manufacturer's obligation will be based on that
14 manufacturer's market share from the previous year multiplied by the
15 total pounds of televisions collected by all manufacturers during the
16 previous program year.

17 3. The department shall educate consumers about recovery of
18 covered televisions.

19 4. Beginning January 1, 2011, the department shall include on its
20 web site a toll-free number and information on where households can
21 return covered televisions for recycling.

260.1262. 1. The department may conduct audits and inspections
2 to determine compliance under sections 260.1250 to 260.1271. The
3 department and the attorney general, as appropriate, shall enforce the
4 provisions of sections 260.1250 to 260.1271 and take enforcement action
5 against any television manufacturer, retailer, or recoverer for failure
6 to comply with any provisions of sections 260.1250 to 260.1271.

7 2. Any television manufacturer that fails to label its covered
8 televisions as required by subsection 1 of section 260.1253, or adopt and
9 implement a recovery plan as required by subsection 5 of section
10 260.1253 may be assessed a penalty of up to ten thousand dollars for the
11 first violation and up to twenty-five thousand dollars for the second
12 and each subsequent violation, in addition to being responsible for any
13 other penalties required by or imposed under sections 260.1250 to
14 260.1271.

15 3. Any person who violates any requirement of sections 260.1250
16 to 260.1271 may be assessed a penalty of up to one thousand dollars for
17 the first violation and up to two thousand dollars for the second and
18 each subsequent violation, in addition to being responsible for any
19 other penalties required by or imposed under sections 260.1250 to
20 260.1271.

21 4. A television manufacturer shall not be penalized for failing to
22 meet its nonbinding recycling obligations, as calculated by the
23 department.

24 **5. Any violation of the sales prohibitions of sections 260.1250 to**
25 **260.1271 may be enjoined in an action, in the name of the state, brought**
26 **by the attorney general.**

260.1265. 1. Financial or proprietary information submitted to
2 **the department under sections 260.1250 to 260.1271 shall be considered**
3 **a closed record under the provisions of chapter 610, RSMo.**

4 **2. The department shall compile the information from television**
5 **manufacturers and issue a report to the general assembly by April first**
6 **each year, beginning the second program year.**

7 **3. The department shall adopt such rules and regulations as are**
8 **necessary to implement the provisions of sections 260.1250 to**
9 **260.1271. Any rule or portion of a rule, as that term is defined in**
10 **section 536.010, RSMo, that is created under the authority delegated in**
11 **this section shall become effective only if it complies with and is**
12 **subject to all of the provisions of chapter 536, RSMo, and, if applicable,**
13 **section 536.028, RSMo. This section and chapter 536, RSMo, are**
14 **nonseverable and if any of the powers vested with the general assembly**
15 **pursuant to chapter 536, RSMo, to review, to delay the effective date,**
16 **or to disapprove and annul a rule are subsequently held**
17 **unconstitutional, then the grant of rulemaking authority and any rule**
18 **proposed or adopted after August 28, 2009, shall be invalid and void.**

19 **4. The department shall use any money received from penalties**
20 **under sections 260.1250 to 260.1271 to offset costs associated with**
21 **administering sections 260.1250 to 260.1271 and to provide grants to**
22 **local governments collecting covered televisions.**

23 **5. All covered televisions collected under sections 260.1250 to**
24 **260.1271 shall be recovered in a manner that is in compliance with all**
25 **applicable federal, state, and local laws and requirements.**

26 **6. The department shall adopt by reference the Institute of Scrap**
27 **Recycling Industries, Inc.'s Electronics Recycling Operating Practices**
28 **as requirements.**

260.1268. 1. Any person who submits a bid for a contract with a
2 **state agency for the purchase or lease of covered televisions shall show**
3 **that the brand of the covered television is in compliance with sections**
4 **260.1250 to 260.1271.**

5 **2. A state agency that purchases or leases covered televisions**
6 **shall require each prospective bidder to certify compliance with**

7 sections 260.1250 to 260.1271. Failure to provide such certification shall
8 render the prospective bidder ineligible to bid on the procurement of
9 covered televisions.

10 3. The state's procurement agency shall adopt rules to implement
11 this section's provisions.

260.1271. Sections 260.1250 to 260.1271 shall be deemed repealed
2 if a federal law or a combination of federal laws takes effect that
3 establishes a national program for the recycling of covered televisions
4 that substantially meets the intent of sections 260.1250 to 260.1271.

Unofficial ✓

Bill

Copy